Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

TAMMY R. SABO,

Petitioner,

v.

STEVE CANTERBURY, Individually and in his capacity as Director, West Virginia Regional Jail and Correctional Facility Authority; JAMIE SPENCER, Individually and in his capacity as Warden; NORTHERN REGIONAL JAIL AND CORRECTIONAL FACILITY; WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. **Whether the Court of Appeals erred in affirming the district court's grant of summary judgment to the defendants under Sabo's Eighth Amendment Claim, when failure to follow a doctor's segregation recommendation incorporated into a Magistrate Order enhanced suicidal risks?**

II. **Whether the Court of Appeals erred in affirming the district court's grant of summary judgment to the individual defendants on the basis of qualified immunity, when the defendants violated the clearly established rights of the plaintiff under the doctor's recommendation incorporated into a Magistrate's Order, by failing to follow the order?**

III. **Whether the Court of Appeals erred in affirming the district court's grant of summary judgment to the defendants regarding the state law claims due to the inapplicability of state immunity and the establishment of the elements of the state causes of action?**

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OPINIONS AND ORDERS BELOW

The opinion and order of the Court of Appeals for the Fourth Circuit affirming the order of the District Court granting summary judgment to defendants Director, Warden, Jail, and Authority, dated March 30, 2006, was not reported and appears at Appendix p. 3A. The Petition for Rehearing and Rehearing En Banc was denied on April 28, 2006, per order appearing at Appendix p. 1A. The panel consisted of Fourth Circuit Judge Motz, Circuit Judge Shedd and Circuit Judge Gregory. The opinion and order of the District Court for the Northern District of West Virginia granting summary judgment to defendants Director, Warden, Jail, and Authority, dated June 16, 2005, appears at Appendix p. 7A.

STATEMENT OF JURISDICTION

Petitioners seek this Court's review of the judgment of the United States Court of Appeals for the Fourth Circuit entered March 30, 2006. Rehearing was requested but was denied on April 28, 2006. Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioner claims violations of the Eighth and Fourteenth Amendments to the United States Constitution:

> Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
>
> Amendment XIV, Section 1. All persons born or

naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case is a civil rights action under 42 U.S.C. §1983 arising from the alleged failure of jail officials to follow a Magistrate's Order incorporating medical recommendations to segregate an inmate from the general population to avoid a substantial risk of suicide in view of her diagnosis of agoraphobia and anxiety.

The complaint was based upon allegations that the defendants Director, Warden, Jail, and Authority, with knowledge of the plaintiff's medical needs, and/or with deliberate indifference to such medical needs, acted or failed to act in such a way to deprive plaintiff of necessary and adequate medical care and/or confinement conditions appropriate to her medical condition, thereby endangering the plaintiff's health and well-being. The amended complaint, filed on August 24, 2004, also alleged state tort counts of intentional infliction of mental distress, negligence, and failure to provide adequate medical care and/or confinement conditions consistent with plaintiff's medical condition. It was alleged that the defendant Jail and named personnel had refused to isolate the plaintiff from the general population and failed to regularly provide her with her prescription medication despite the existence of a Magistrate's Medication Order, as well as physician letters, ordering and otherwise requesting the same.

The case was assigned to the Honorable Frederick P. Stamp, Jr., of the United States Court for the Northern District of West Virginia who initially denied Defendants' Motion to Dismiss. Following discovery, Defendants filed a Motion for Summary Judgment which was granted by Judge Stamp on June 16, 2005. Subsequently, an appeal was taken to the Fourth Circuit Court of Appeals. Without oral argument, the panel, consisting of Circuit Judge Motz, Circuit Judge Shedd and Circuit Judge Gregory, affirmed the grant of summary judgment in an unpublished per curiam opinion. In sum, the panel found no reversible error and affirmed substantially on the reasoning of the district court. Ultimately, after consideration of the petition and since no member of the Circuit Court requested a poll, the same panel denied plaintiff's Petition for Rehearing and Rehearing En Banc.

The facts of the case follow:

On or about March 3, 1999, upon her plea of guilty to Domestic Battery in Case No. 99M-222-H in the Magistrate Court of Ohio County, West Virginia, Plaintiff was sentenced by Ohio County Magistrate Rose M. Humway to one year in the Northern Regional Jail. All but 6 months and one day of that sentence was suspended in lieu of a one year probationary period. The Plaintiff was to serve the six months and one day on 91 consecutive weekends.

After serving two of the weekends, plaintiff requested that due to her medical condition that she be permitted to serve the balance of her sentence on home confinement without electronic monitoring. The sentence was stayed pending the decision on the request. On December 3, 1999, the request was denied by the Honorable Arthur M. Recht, Judge of the Circuit Court of Ohio County, and it was ordered that the sentence be imposed immediately with credit for two weekends already served. *See* a

copy of the Order, App.17a-18a.

The Magistrate was informed concerning the medical condition of the plaintiff on December 15, 1999, and as a result issued a Medication Order on December 21, 1999, that the Northern Regional Jail was to comply with plaintiff's treating physician's orders/requests and provide prescription medicine to Tammy Sabo during the periods of time she was serving at the jail. *See* a copy of the Medication Order App.23A, which provides:

> MEDICATION ORDER
>
> The 15th day of December, 1999, came the State by its counsel, William J. Ihlenfeld, II, Assistant Prosecuting Attorney: as well came the defendant Tammy R. Sabo, in person and by her counsel, Kevin Stryker, Assistant Public Defender, in accordance with the Court's setting the matter for hearing on the terms and conditions of the defendant's serving of the sentence herein.
>
> Whereupon the Court heard the request of the defendant based on the medical treatment rendered by her treating physician, Warren Goodrich, D.O., of Northwood Health Systems, that the Court require the Northern Regional Jail to comply with the treating physician's orders/requests and provide the prescription medicine to Tammy Sabo during the periods of time she is serving her sentence at the Northern Regional Jail.
>
> The Court, being of the opinion the relief requested was proper, and hearing no objection thereto, accordingly
>
> ORDERS the Northern Regional Jail to comply with the medical orders/requests and provide the prescription medicine to Tammy Sabo from her treating physician, Warren Goodrich, D.O.,

of Northwood Health Systems.

SO ORDERED.

ENTER this 21st day of December, 1999.

Rose M. Humway, Magistrate

The medical condition diagnosed by her treating physician Warren P. Goodrich, D.O. included a diagnosis of Panic Disorder with moderate agoraphobia, Social Phobia, Alcohol Abuse and possible Schizotypal Personality Disorder. On or about February 19, 2000, her treating physician issued a letter indicating that because of her depression and agoraphobia she needed to be separated and kept in her own cell away from the rest of the jail community. *See* letter attached at App. 25A, which provides:

> I have been treating Tammy Sabo for many years for depression and agoraphobia. She is now serving time on weekends in the jail. I feel that she needs to be separated, and kept in her own cell away from the rest of the jail community in order to prevent serious complications. She could easily become suicidal as a result of experiencing intense, severe amounts of anxiety due to her placement in the general jail community. Please encourage isolation in order to maintain this patient's current level of mental health. (This opinion has also been put into affidavit form, App.1146a)

Magistrate Humway called the Northern Regional Jail and informed them of the needs set out by Dr. Goodrich. Notwithstanding the Medication Order and letter from the treating physician, the jail refused to isolate her from the general population which included federal prisoners and prisoners who were felons. Additionally, she was not always given her prescription medication at the proper time and sometimes was

given said medication without food although the prescription required them to be taken with food to prevent stomach problems.

This treatment, or lack thereof, continued up until her final release from the jail which took place on or about June 20, 2001. She had nearly ninety (90) separate admissions to the jail.

At the center of this case is the order issued by Magistrate Humway. The Defendants seek to limit the effect of the order by claiming that it deals exclusively with the routine administration of prescription medication, rather than the more serious component of following Dr. Goodrich's direction that Sabo be isolated to minimize the effects of interaction with the general jail population. In light of her chronic and serious mental health history, there was a genuine medical concern that failure to comply with the doctor's recommendation, could trigger her suicidal tendencies. In fact, during the time period an actual suicide attempt was documented as well as other occasions requiring a suicide watch.

This clear order was not followed by the jail, despite actual knowledge by the Warden of the facility, Jamie Spencer. According to Spencer such orders are <u>not</u> routinely followed. App. 756a. Here Spencer admits that following review of the letters with his adviser, the decision was made not to comply with the suggestion made by Dr. Goodrich and to put her in the main line population. Rather, the jail reserves the right to review the medical condition of the inmate by their own medical personnel. If the jail personnel disagree with the recommendation of the inmates' physician or if they disagree with a judicial order, under certain circumstances, the order will not be followed. App. 263a.

In these circumstances the jail follows the procedure of contacting the Judge, often to convince the court to leave the ordered restriction to the jail's discretion. App. 254a-256a. Typically this is done verbally. Under the procedure no attempt is

made to contact the inmate or the inmate's counsel, as the jail personnel seek informally to modify the order. App. 256a. According to Canterbury, the Executive Director of the state-wide jail authority, the informal process is almost always successful. In fact, he can recall only one occasion when a formal court litigation was required to resolve a difference with the Court. App. 254a-255a.

In this case, the jail facility attempted to utilize this informal procedure to escape the effect of a court order. Shar Murrin, who acts as the jail's liaison with the courts, reported that in her conversations with the Magistrate she believed they were relieved from this special housing requirement, a claim reiterated in the Defendants' brief. App. 969a-975a.

However, the Magistrate reported her call with the jail to Sabo's counsel, Public Defender Jack Wood, by means of an official letter communication. That letter provided:

> If you will draft an ORDER relating to the above matter in which you submitted a Motion to Abide with psychiatric opinion of Warren P. Goodrich, D.O., I will certainly review and comply if possible.
>
> I spoke with a representative of the Northern Regional Jail today who told me that they would attempt to comply but that, at certain times they have federal prisoners etc. which may not make it feasible-but to try.
>
> After reading Dr. Goodrich's letter and reviewing warrant and file, I wonder about her mental status at the time of hearing when she was represented by another member of the Public Defenders Office. (3/3.99)
>
> Your kind attention appreciated. (See Wood

affidavit and attachment, p. 8 & 9; App. 1151a-1152a)

Clearly this conversation according to the Judge, did not relieve the jail of following the isolation requirement. It merely acknowledged the tacit conditions that the order be followed as far as practicable. On those occasions when other demands, such as federal prisoners had to be considered, the order need not be followed strictly. Otherwise, the jail was to utilize its best efforts, in good faith, to comply.

Here, the deposition of Spencer and Murrin revealed that there were no practical impediments to compliance. The isolation cells were at all times available for use by Sabo. App. 931a-932a; 953a-954a, App. 722a-723a; 736a.

In fact, Spencer has admitted that the established procedure on determining proper housing where there are special medical concerns, is to have the matters reviewed by his own medical personnel, including the available doctor. Since he is not trained in medical matters, he would rely upon this medical judgment of the licensed physician. App. 753a-754a.

However, on the record, this was not done in this case. Rather, Spencer, on his own authority, chose to disregard the Magistrate's order, Dr. Goodrich's opinion (the treating doctor) and subject Sabo to the unreasonable risk of triggering her suicidal tendencies. App. 755a-757a. While he acknowledges that he should have obtained and followed a physician's medical opinion, there is no such support evidenced here.

Further, according to Sabo, she specifically spoke to and complained to Spencer personally. App.346a-349a. The complaints primarily concerned the absence of the medication she required on a timely basis. According to her testimony, she often

was not provided the medication she required during the afternoon or 2:00 p.m. time slot. In fact, these omissions are somewhat confirmed by the jail's records, as interpreted by their own L.P.N. supervisor. App. 1257a-1265a. Sabo also testified that some of the medication needed to be taken with food, so as to avoid stomach side effects, but this often did not occur resulting in missed medications as well as times she refused the medications due to inability to tolerate the side effects. The hospital records also confirm several refusals. App. 372a-374a.

At the Regional Executive Director level, Canterbury acknowledged that he would at a minimum, expect Spencer to seek to follow the recommendation of a physician. App. 223a. Further, if the informal procedure of adjustment were followed, by means of informal contact with a judge, nonetheless, he would expect that some form of amended order would be forthcoming to document the change. App. 259a. In this case, without explanation or excuse, neither of these critical steps were followed.

The Regional Director acknowledged the endorsement of a policy of not routinely or automatically following court orders, even those entered following a hearing where the states' interests are represented. The Director also acknowledged the existence of a policy of informal attempts to modify court orders, which they disagree with, after the fact, and without notice to the inmate or their counsel. There is no procedure whatever in place to assure that jail officials follow the advice of physicians, rather the usurping of the medical role for themselves, as occurred here. There appears to be no proper training on how to handle a contested court order, including the basic due process requirements of notice and opportunity to be heard by the inmate and/or her counsel.

The actions of the defendants deprived the plaintiff her civil rights including but not limited to the following:

a. Defendants, their agents and employs, with knowledge of plaintiff's medical needs and/or with deliberate indifference to such medical needs, have acted or failed to act in such a way as to deprive plaintiff of necessary and adequate medical care and/or confinement conditions appropriate to her medical condition, thereby endangering the plaintiff's health and well-being. Such acts and omissions of the defendants violate rights secured to the plaintiff under the Eighth and Fourteenth Amendments.

b. Defendants, knowing of the medical needs of the plaintiff and with deliberate indifference to the inadequacies and deficiencies in the medical and other staffing and procedures at the Northern Regional Jail, have failed and neglected to establish and implement policies, practices and procedures designed to assure that plaintiff receive medical treatment and care and/or confinement conditions appropriate to her medical condition at the standards thereof in the west Virginia regional Jail & Correctional Authority, or have adopted policies, practices and procedures which defendants knew, or reasonably should have known, would be ineffective in delivering medical treatment and care at such standards, thereby endangering the plaintiff's health and well-being in violation of rights secured by the Eighth and Fourteenth Amendments.

c. Defendants, knowing of the medical needs of the plaintiff and with deliberate indifference to such needs, have failed to instruct, supervise or train their employees and agents in such a manner as to assure the delivery of adequate medical care to plaintiff and/or confinement conditions consistent with her medical condition, thereby endangering the plaintiff's health and well-being in violation of the Eighth and Fourteenth Amendments.

These actions allegedly have served to deprive the Plaintiff of her civil rights, as previously outlined, under color of law and hence violate the United States Constitution and are actionable under 42 U.S.C. §1983.

REASONS FOR GRANTING THE WRIT

I. This Court should grant certiorari to decide whether a grant of summary judgment was proper regarding plaintiff's Eighth Amendment claim of cruel and unusual punishment when several genuine issues of material fact remain as to whether, objectively, plaintiff had demonstrated a substantial risk of sufficiently serious harm from the alleged deprivations of appropriate medication and confinement conditions as per her diagnosed medical condition. Moreover, whether a grant of summary judgment was proper when several genuine issues of material fact remain as to whether, subjectively, defendants had acted with sufficiently culpable states of mind.

This case is a demonstration whereby a legitimate conservative judicial philosophy, permeates neutral legal procedure to the point where an unpopular litigant effectively is deprived of the benefit of basic legal rights. Counsel has practiced civil rights law, primarily from the perspective of plaintiffs for nearly thirty years, mainly under the jurisdiction of the Third Circuit Court of Appeals, as his office is based in Western Pennsylvania. However, he has recently been requested to take cases in nearby West Virginia, within the jurisdiction of the Fourth Circuit. This petition for writ of certiorari is part of a series of filings and anticipated filings seeking to bring to the attention of the Court, the perspective

that the conservative judicial philosophy of the Fourth circuit has evolved such that parties challenging law enforcement rarely receive the benefit of basic legal precepts. An earlier petition, Edens v. Kennedy, No. 04-895, sought to demonstrate that the doctrine of qualified immunity was so strictly applied in the Fourth Circuit that cases where rights were recognized as violated were not published, so as to allow continual immunity for the same actions by law enforcement. The instant petition, a prisoner's medical treatment case, is offered to demonstrate a plaintiff's inability to survive summary judgment when facts are assumed favorable to the defendant law enforcement officials, without the opportunity for a fair factual hearing.

This Court has held that under the Eighth Amendment's proscription on cruel and unusual punishment, prisoners have the constitutional right to medical care. Estelle v. Gamble, 429 U.S. 97, 50 L.Ed. 2d. 251, 97 S.Ct. 285(1976). The Court explained that a prisoner's Eighth Amendment right is violated when officials are deliberately indifferent to the prisoner's serious medical needs. Id. at 104.

Several circuits have held that a prisoner has a clearly established constitutional right to be protected from known risks of suicide and to have his serious medical needs attended to. Yellow Horse v. Pennington Cty, 225 F.3d. 923, (8th Cir. 2000). Also a prison inmate has an Eighth Amendment right to be free from deliberate indifference to serious psychiatric needs. Waldrop v. Evans, 871 F.2d 1030 (11th Cir. 1989).

A prisoner's psychological needs clearly may constitute a serious medical need, especially when it results in suicidal tendencies. Horn v. Madison Cty, Fiscal Ct. 22 F.3d 653 (6th Cir, 1994). Where plaintiff alleges that defendants are indifferent to the prisoners' psychological needs, particularly suicidal tendencies, the objective component of the constitutional claim is easily satisfied.

Comstock v. McCrary et. al, 273 F.3d, 693 (6th Cir. 2001).

It is noted that Fourth Circuit rulings are consistent with the law from the circuits. In Lee v. Dunn, 641 F.2d 1117, 1121 (4th Cir, 1981) it was explained that "prison officials have a duty to protect prisoners from self-destruction or self-injury," cited with approval in De' Lonta v. Angelone, 330 F.3d 630 (4th Cir, 2003). De' Lonta also held that an inmate's need for self-protection was a serious medical need to which prison officials could not be deliberately indifferent. The district court's opinion, as adopted by the Fourth Circuit, further delineated the appropriate Eighth Amendment test to be employed in the instant case, noting that in order to establish such a violation, the plaintiff must prove "(1) that the deprivation of [a] basic human need was objectively sufficiently serious, and (2) that subjectively the officials act[ed] with a sufficiently culpable state of mind." (*See* Memorandum Opinion, App. 12A, quoting De'Lonta v. Angelone, 330 F.3d 630,634 (4th Cir. 2003)(citing Wilson v. Seiter, 501 U.S. 294, 297 (1991)).

It is important to note, however, that the district court, as well as the Fourth Circuit panel, appear to have overlooked an important part of the opinion in De'Lonta, supra, which further explains how a plaintiff can satisfy the first prong of the aforementioned test. In particular, the Fourth Circuit Court set forth two ways in which a plaintiff can demonstrate an extreme deprivation adequate to satisfy the objective component of the test. In sum, a plaintiff can either allege "a serious or significant physical or emotional injury resulting from the challenged conditions, or demonstrate a substantial risk of such serious harm resulting from the prisoner's exposure to the challenged conditions." De'Lonta, 330 F.3d at 634 (citing Helling v. McKinney, 509 U.S. 25, 31 (1993)).

Instead of exploring the "substantial risk" factor, a crucial element of the plaintiff's case, especially at this early stage of the

proceedings prior to trial, the lower court focused its analysis, narrowly, on causation finding that, despite the fact that the plaintiff had presented facts indicating a serious mental injury, she had shown neither cause in fact nor proximate cause in relation to the alleged deprivations at the Jail. App. 13A. The lower court's only apparent explanation for the exclusion of the substantial risk element and the narrow focus on causation seems to come from the distinction between the differing standards of review found in De'Lonta and the instant case, i.e. motion to dismiss versus motion for summary judgment. App. 12A-13A

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Notwithstanding the differing standards of review, Plaintiff argues that several genuine issues of material fact remain with regard to whether or not the defendants' failure to follow a doctor's segregation recommendation incorporated into a Magistrate's Order, along with the failure to regularly provide prescription medication, enhanced substantial suicidal risks and amounted to objectively sufficiently serious deprivations.

In sum, Sabo has maintained that the alleged deprivations of medical care and improper-confinement conditions, i.e. failure to ensure proper medication and failure to isolate from the general population, on behalf of defendants, were "sufficiently serious" because she suffered from depression and agoraphobia. Further, Sabo has argued that the defendants had sufficiently culpable states of mind because they knew of her condition through her treating physician's requests and recommendations, as incorporated by the Magistrate's Order. And, that defendants knew that failure to follow such recommendations would result in a deterioration of mental health and enhance suicidal risks. Overall, Sabo has contended that she has a constitutional right to be protected from known risks of suicide and to be free from deliberate indifference to serious psychiatric needs. App. 11A .

In support of her argument, Sabo attested to complaining to

Defendant Spencer about routinely not receiving her medications in the afternoons and/or being unable to take them without proper food or water. (App., Vol. II, pp. 346a-349a, 372a-374a). In fact, these omissions were somewhat confirmed by the Jail's records, as interpreted by their own L.P.N. supervisor. (App., Vol. III, pp.1257a-1265a). Furthermore, Sabo attested to being placed in the general population, in a cell by herself, despite the fact that she was deemed suicidal upon admission. (App., Vol. II, p.338a). Defendant Spencer admitted that despite recommendations from Sabo's treating psychiatrist that she be placed in isolation, the decision was made to place her in the main line population. (App., Vol. II, p. 756a).

Sabo testified to the actual effects of her illness while incarcerated, which included severe emotional distress and related physical trauma consisting of headaches, upset stomach, nightmares, nervousness, shortness of breath due to panic attacks, involuntary jumping at the slightest provocation, and the constant tightening of muscles in the neck and chest producing pain and discomfort. (App., Vol. II, pp. 356a, 367a, 372a). Moreover, Sabo directed the lower court's attention to the affidavit and testimony of her treating psychiatrist, Dr. Goodrich, who described her serious mental health history and specifically stated that the risk of suicide was realistic under the circumstances of this case. (App. Vol. III, pp. 1368a, 1375-76a, 1389-90a, 1393a). Importantly, Dr. Goodrich's testimony supported the fact that his recommendations were necessary for the benefit of Sabo's mental health, and his earlier diagnoses, that the failure to recognize her need for isolation and proper medication would result in serious complications of her depression and agoraphobia, remain unrebutted.

With respect to the issue of whether the Magistrate's Order and subsequent doctor recommendations were followed, Sabo cited the relevant testimony of Defendants Spencer and Canterbury which indicated certain policies of the Jail in regard to court orders

and physician recommendations. In particular, Defendant Spencer's testimony reflected a policy of the Jail to informally and without documentation, decide whether or not to consider the information contained in a letter from a personal physician. (App., Vol. II, pp. 752-54a). Interestingly, Spencer admitted that what he considered to be suggestions were not routinely followed but rather reviewed within the discretion of jail personnel. Id.

Similarly, Defendant Canterbury indicated that under certain circumstances a judicial order, particularly medical orders, may not be routinely followed until after a review by medical staff and/or informal communication with the magistrate, notably without the presence of counsel. (App., Vol. I, pp. 255-56a, 263a).

The district court conceded that Sabo had successfully presented facts indicating a serious mental injury, but held that she did not make the requisite showing that her injuries were caused by deprivations at the Northern Regional Jail or that the deprivations themselves were severe. Notwithstanding the aforementioned citations to the record, the district court found that Sabo had not demonstrated a causal link between her time in the Jail and her injury. App. 15A. In particular, the court reasoned that the evidence proffered only showed that Sabo had severe preexisting mental issues going into the Jail, any suicide attempts occurred outside of the intermittent incarcerations, and focused on the fact that Sabo herself was unsure if the suicide attempts were caused by conditions in the Jail. App.13A-15A.

Moreover, the district court opined that Sabo had not shown that the alleged deprivations were severe for purposes of the Eighth Amendment. Specifically, the court found that defendants' decisions to keep Sabo in the general population were made in her best interest, Sabo had failed to show how the lack of food with medication constituted a severe deprivation, and cited Sabo's lack of a formal grievance, regarding the same, as evidence that she was

not suffering from the severe deprivation alleged. App.15A-17A. Notably, the court stated that the evidence of record demonstrated that Sabo had received her medications while incarcerated. Id.

Ultimately, the district court also held that Sabo had failed to show deliberate indifference to her serious medical needs on behalf of the defendants. App. 17A. In sum, the court found that based on the content of the doctor's letters and the Court Order in question, along with the actions by defendants of placing Sabo on suicide watches, placing Sabo in the general population to avoid the stresses of the isolation conditions at the Jail, and records of Sabo receiving her medications, it was clear that defendants had taken measures to ensure compliance with "the spirit" of Dr. Goodrich's recommendations and had thus complied with the Medication Order. App.17A-19A.

Petitioner Sabo respectfully submits that her aforementioned citations to the record are relevant and support her proposition that several genuine issues of material fact remain in this case, especially when viewed in a light most favorable to her position. In particular, Sabo contends that Dr. Goodrich's testimony supports her position that the risk of suicide under the alleged circumstances was a realistic threat. Since the risk is the legal element to be established , and the Doctor did not speculate about the risk, the fact that she did not in fact commit suicide is of no legal concern. *See* De Lonta v. Angelone, 330 F.3d 630 (4th Cir. 2003); Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001). Accordingly, Sabo argues that the objective component of her constitutional claim has been met.

It is equally clear that the subjective element whereby a defendant draws the inference that the prisoner is exposed to a specific danger, also was easily established in this case. As noted above, a specific doctor's recommendation, as incorporated by a specific court order, was issued to the defendants and, as Sabo

argues, was not followed. Based on the testimony of Defendants Canterbury and Spencer, this appears to be part of an established pattern and practice and policy whereby such medication orders and recommendations are resisted unless confirmed by the prison doctor and/or otherwise modified by means of ex parte contacts with judges. It is respectfully submitted that disregarding a court order of which the jail personnel have personal knowledge is sufficiently serious and deliberately indifferent, regardless of what the district court deems to be reasonable attempts to comply with "the spirit" of the doctor's recommendations. At the very least, Sabo maintains that the record demonstrates that at times she was not isolated and did not routinely receive her medications and, as such, creates genuine issues of material fact proper for consideration by a jury.

Respectfully, it is submitted that Sabo, and other prisoners similarly situated are entitled to better care than this. The jail should be directed to unhesitatingly comply with judicial orders. Since these orders are entered after a full hearing with state participation, if there are to be any modifications, it should be done after a full hearing with notice to the parties and counsel. This Court is urged to write a forceful opinion to jail authorities, directing them to alter the policies and practices that put Sabo and other prisoners at risk. Moreover, since it is anticipated that these problems within the jail system will continue, it is respectfully requested that this Court grant the Petition in an effort to clarify the district court's ruling with respect to the proper test to be applied to Eighth Amendment, cruel and unusual punishment cases.

II. This Court should grant certiorari to decide whether the proper standard for summary judgment was applied to the instant case. In particular, the Court is respectfully requested to determine whether the plaintiff was afforded the benefit of all proper inferences with

respect to her position that the Doctor's recommendations were incorporated into the Magistrate's Order and were otherwise ignored.

As recognized by this Court in Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 587 (1986), when reviewing the supported underlying facts pursuant to Federal Rule of Civil Procedure 56(c), a motion for summary judgment, all inferences must be viewed in a light most favorable to the party opposing the motion. See id. (quoting United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)). The plaintiff argues that based upon the record and the opinion of the district court below, as adopted by the Circuit Court, it is apparent that she was not afforded the benefit of all factual inferences in a light most favorable to her Eighth Amendment claim.

The district court only twice addresses plaintiff's contention that Dr. Goodrich's letters, recommending both isolation and proper medication, were clearly incorporated into Magistrate Humway's Order and were ultimately ignored.

First, in the context of a deliberate indifference analysis, the district court disagreed with plaintiff's contention that the subjective element of the Eighth Amendment test was satisfied because the defendants had ignored a court order, as well as her doctor's recommendations thereby incorporated. In sum, the court found that based upon the content of the letters and the order itself there was no indication that they were ignored. App. 18A.

Overall, as previously discussed, the district court found that the Northern Regional Jail had monitored Sabo's psychological health, took steps to ensure the plaintiff would not suffer any severe deprivations, and responded reasonably to the risks presented in the doctor's evaluation. Therefore, the court held that the plaintiff had not established that the subjective acts of the defendants violated

her Eighth Amendment right against cruel and unusual punishment. App. 19A.

The district court addressed plaintiff's argument a second time in the context of a qualified immunity analysis. There, the court held that plaintiff erroneously relied on the assumption that Dr. Goodrich's letters and Magistrate Humway's order required Sabo's placement in isolation. App. 20A. Instead, the court held that the plain language of these documents merely asks the jail officials to "consider" isolation and/or merely "encourages" isolation. Similarly, the court opined that the Magistrate Order simply directs the jail to provide Sabo with medication, but does not require isolation. Overall, the court felt that the letters ultimately requested action for the sake of Sabo's mental health and that such action had been taken. App. 20A.

Plaintiff maintains that a plain reading of the documents in question leads to the conclusion that the Magistrate's Order was a legal direction to the Jail, requiring them to follow her doctor's orders/requests. Clearly the doctor's letter constitutes a request that Sabo be segregated to avoid the substantial risk of suicide. Read in conjunction with each other, the mandatory effect to segregate is clear. And it is respectfully submitted that at the summary judgment level, the district court's interpretation of the documents in question is not supported by the proper standard which should afford the plaintiff the benefit of all factual inferences. Ultimately, plaintiff maintains that this question of interpretation remains a genuine issue of material fact proper for consideration by a jury.

Furthermore, it is important for the Court to recognize that while the district court makes short shrift of plaintiff's argument for the proper interpretation of the documents in question, it does take the time to explain how the defendants in this case reasonably attempted to comply with the "spirit" of the Magistrate's Order and/or physician letters and as such, no sufficiently serious

deprivations resulted. While it is not clear what precedent the district court refers to for this standard with regard to Eighth Amendment, cruel and unusual punishment claims, regardless, the plaintiff argues that throughout its analysis the district court once again fails to afford her the benefit of all the factual inferences.

For instance, with regard to the substantial risk factor of the objective test for "sufficiently serious deprivations," the district court held that in light of Sabo's mental and physical health, and the exigencies of time and circumstance, the routine admission evaluations, the suicide watch, regular distribution of medications, and the lack of grievance on the part of Sabo all indicated that defendants maintained reasonable conditions. App. 20A-21A. Despite the finding that she was provided with appropriate medical care and confinement conditions, plaintiff submits that as per her testimony several genuine issues of material fact remain.

Beginning with Sabo's treatment upon her intermittent admissions to the Jail, the district court emphasizes the efficacy of the physical and psychiatric evaluations performed by the staff nurses and the booking officers. Accordingly, they deem the routine inquiries regarding suicidal tendencies and current medications, which occasionally led to suicide watches being ordered, strong evidence of appropriate medical care as provided by the defendants. App. 18A-19A. However, this is only half of the story. Without explanation, certain parts of Sabo's deposition testimony are overlooked.

For instance, while it may be true that on every separate admission the plaintiff was routinely asked if she was suicidal, it is not clear that the subsequent decisions made by the staff, which included nurses and/or guards, but not a doctor, were always in her best interest. Sabo attests to several occasions where by simply answering "yes" to questions of suicidal thoughts she was placed on a suicide watch in a holding cell. (App., Vol. II, p. 337a).

However, Sabo also recalls certain times when, although deemed suicidal, she would be placed back into the general population in a cell by herself during which a guard, not a nurse or doctor, would check on her every hour or so. (App., Vol. II, p.338a). As such, and contrary to the opposing arguments, it is not clear from the record how these perfunctory inquiries and subsequent housing decisions actually addressed and/or accommodated Sabo's well-known serious medical needs.

Interestingly, when Sabo would admit to suicidal ideations the defendants felt it necessary to follow Dr. Goodrich's suggestions and isolate her, to varying degrees, yet on other occasions would simply disregard the recommendations and mainstream her. In either scenario it is not clear that her serious medical needs were addressed. While the periodic checks by jail personnel may have averted an actual suicide attempt during specific time periods in the Jail itself, the overall disregard for the isolation recommendations and placement in the general population even during certain suicide watches certainly can be seen to have enhanced the risk of serious harm and/or significantly contributed to Sabo's alleged injuries.

Furthermore, the district court focuses on Dr. Goodrich's testimony regarding the isolation conditions at the Jail. App. 16A. Having never actually visited the Jail, the Doctor basically responded hypothetically to descriptions of the holding cell versus the general population cells. (App., Vol. III, 1348a-1349a). When presented with the two alternatives Dr. Goodrich simply picked the apparent lesser of two evils with respect to Sabo's mental conditions. However, such a hypothetical answer does not negate the basis of his recommendations for isolation, nor does it automatically translate into evidence of record demonstrating that the defendants' housed Sabo according to her best interest. Interestingly, nothing in the record explains why the holding cell could not be altered with a curtain or otherwise, in an attempt to

address all of Sabo's serious psychiatric needs.

Additionally, the district court maintains that despite Sabo's contentions, the medication charting records demonstrate that she was regularly given her medication during incarceration. App. 16A-17A. However, Sabo specifically recalls not receiving her afternoon medication regularly, not being given adequate food and water with certain medications, as well as not being able to effectively swallow any of the medications crushed and/or mixed together in powder form. (App., Vol. II pp. 343a- 350a).

Contrary to the opposing conclusions, a review of the medication charting records does support Sabo's claims. Although Sabo specifically recalls the irregular dispensing of her Visteril in the afternoons, the records actually reveal some discrepancies regarding the 2:00 pm delivery of Neurontin. It is noteworthy that on several occasions the charting indicates that either no delivery was made, i.e. appropriate box left blank with no entry of nurse initials, no nurse was available, i.e. appropriate box marked with an "X," or delivery was made but Sabo refused the medication, i.e. appropriate box marked with nurse's initials and then circled. (App., Vol. II pp. 869a,872a,874a,875a). No matter how you interpret the charting it is clear that on certain specific days Sabo did not effectively receive at least one of her afternoon medications. And whether or not the medications did not make it to her cell or she refused them because she was unable to swallow them in crushed form (she often regurgitated them, App. Vol. II, p. 353a), it is clear that jail personnel were well aware that Sabo was not being fully medicated as prescribed. (*See also* App., Vol. III, pp. 1257a-1265a, L.P.N. supervisor admits that the charting could be interpreted to reflect that Sabo did not receive her medications regularly).

Turning to the issue of the grievance procedure available at the Jail, while the district court concedes that failure to file a formal

grievance is not dispositive of Sabo's claim, they rely on it as evidence that she was not suffering any "severe deprivation." App. 16A-17A. In drawing such a conclusion they once again have overlooked several integral parts of Sabo's deposition testimony. First, it is important to acknowledge Sabo's state of mind during her intermittent periods of incarceration. When asked why she did not file a grievance after being placed in the general population while under a special suicide watch, Sabo reasoned that she was not at the Jail long enough to see it through. (App., Vol. II, p. 339a).

Based on Sabo's observations she believed that because she was only there two days a week it was not enough time to fully exercise the grievance procedure. Sabo specifically recalled hearing other inmates complain about waiting weeks for a response so she concluded that there was no sense in even getting started. (App., Vol. II, p. 339a). Further influencing her state of mind was the attitude of the guards whom she recalls often tormented her about her placement for the weekend. (App., Vol. II, pp. 354a, 355a). Sabo specifically remembered an incident where she reminded the guards about Dr. Goodrich's February 29th letter, recommending that she be kept alone, as she was being placed in the general population. (App., Vol. II, p.364a). Despite her pleas for isolation, the guards responded to Sabo by placing her in the A-5 pod with a roommate anyway, adamantly reminding her that her doctor does not run the Jail. Id. Ultimately, plaintiff argues that the words of the guards evidence the clear policy and/or custom of the defendants in disregarding doctors' recommendations even if incorporated by a magistrate's order.

In further rebuttal of the failure to file a formal grievance, plaintiff directs the Court's attention to two other important parts of her deposition seemingly overlooked by the district court. Plaintiff recalls two specific instances were she informally complained to Jail personnel and/or prison officials to no avail. First, Plaintiff attested to informing a counselor named "Char" about not receiving her afternoon medications regularly which would cause frequent

headaches and anxiety. (App., Vol. II, p. 356a, 357a). Although Sabo would use the buzzer to summon the guard and request medication, often the nurse would not show. (App., Vol. II, p. 344a). Once, after running into "Char" in the pod area, Sabo inquired about the medication problem and was told that it would be looked into, ultimately making sure that she got them. See id. at 343a. Unfortunately for Sabo, this so-called informal grievance procedure produced no results. See id. at 345a.

Similarly, Sabo recalls having the opportunity to complain to Defendant Spencer about the same issue, face to face. Though denied by Spencer, Sabo attested to meeting with him in the booking area after she had been "raising cane" with the guards about not getting her medications. (App., Vol. II, p. 347a). According to Sabo, she was upset with the guards reaction to her medication complaints who purportedly said things like "you'll get it when we get around to it" and "you'll get it when you get it." Id. In the end Sabo recalls Defendant Spencer coming to the booking area and talking with her personally and promising that he would see what he could do about the issue. See id. at 348a. Once again Sabo's informal grievance procedure failed to achieve any results, thus leading her to reasonably believe that any further action on her part would be futile. See id. at 349a.

With respect to Sabo's recorded suicide attempts in January and September of 2000, the lower court places great weight on the testimony of Sabo and Dr. Goodrich. In particular, they focus on so-called admissions by Sabo that she is unsure if any of the suicide attempts were caused by conditions in the Jail. App. 14A-15A.

Beginning with the lower court's rationale, it is noteworthy that they further anchor their opinion that a causal link does not exist upon boilerplate forms filled out pursuant to Sabo's September 2000 suicide attempt which state that she was upset about her boyfriend, as well as statements by Dr. Goodrich

indicating that going to jail in general might have triggered the episodes. App. 14A-15A. Plaintiff submits that neither of these evidentiary entries are damaging to her case, especially with the benefit of all factual inferences viewed in a light most favorable to her.

First and perhaps foremost, it is important to remember that Sabo is not a doctor and therefore cannot properly assess all of the factors that contributed to either of the aforementioned attempts. As such, anything she stated while in such a fragile state certainly should not be afforded the same evidentiary weight as an official diagnosis or expert testimony. Second, with respect to Sabo's deposition testimony, the portion cited to by the lower court actually cuts against their rationale. App.15A. Specifically, when asked if she remembered why she had tried to kill herself in September of 2000 she replied "[j]ust upset and worrying about going to jail." The lower court finds it important to emphasize the phrase "going to" in Sabo's response and presumably they interpret it as a reference to the fear of going to jail in general. However, unlike the first suicide attempt which occurred prior to the start of the full 91 weekend intermittent sentence, here Sabo is speaking to the second attempt which occurred several months into the incarceration. Accordingly, her statement very well could be interpreted as evidence of her fear of going back to jail to face the stressful conditions, a hurdle she had to overcome on a weekly basis.

With respect to Dr. Goodrich's deposition testimony, the lower court zeros in on his statement that the stressor of going to jail might have led to Sabo's suicide attempt. They dismiss this professional opinion as speculative and too general to serve as evidence of Sabo's injuries. App. 13A-14A. While it may be true that Dr. Goodrich has no specific recollection and/or documentation regarding the specific causes of the suicide attempts, noting that he was not the treating physician as of the

second recorded attempt, his testimony does outline the serious risk of harm Sabo faced without isolation and proper medication. Under the law, it is the risk that is the material element of the civil rights violation, rather than the actual injury.

For instance, Goodrich explained that Sabo was diagnosed with a GAF score of 43 indicating a significant level of impairment of daily functioning including a genuine potential risk of suicide. (App., Vol. III, pp. 1375a, 1376a). And he goes on to describe Sabo's " psychopathology" and "fragile personality makeup," explaining that she is a person who cannot deal with much stress and that stress to her might be nothing to the average person. See id. at 1382a, 1386a. Such stress, according to Goodrich, often generates panic attacks which could lead to self-destructive behavior. See id. at 1387a. That this in fact occurred is confirmed by both the defendants and the district court who noted that on several occasions the plaintiff was placed on a suicide watch. App. 18A. It is troubling how the district court utilizes this manifestation of the predicted harms, confirmed by defendants own personnel, to somehow benefit them a summary judgment.

Moreover, Goodrich discusses the importance of Sabo regularly getting her medications in order to avoid decompensation and high levels of emotional stress. See id. at 1390a. And he affirms that the risk of suicide was a realistic threat from being placed in the general population. See id. at 1393a. It is clear that these were Goodrich's specific concerns when he wrote the letters to the Jail requesting isolation and proper medication. See id. at 1389a,1390a.

Overall, plaintiff submits that both her testimony and Dr. Goodrich's demonstrate the serious risk of harm that she was subjected to at the Jail by not being isolated and/or regularly provided medications. At the very least, a careful review of the record in a light most favorable to Sabo reveals several genuine

issues of material fact which should have survived the motion for summary judgment. The legal standard as defined in De'Lonta, supra, only requires that the plaintiff demonstrate a substantial risk of serious harm resulting from the prisoner's exposure to the challenged conditions, of which it cannot be said as a matter of law the plaintiff has not satisfied.

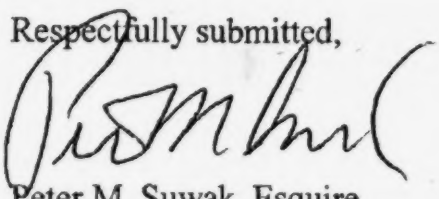
This Court is urged to grant certiorari. If courts fail fairly to shine the light of inquiry upon the actions of prison officials, the natural political tendency to reduce or ignore the legitimate medical concerns of prisoners will be without a legal countervailing balance. Further, the evaluative tendencies of the most conservative circuit, affecting the manner in which facts are viewed in the course of summary judgment motions, has seriously skewed the procedure in favor of defendant law enforcement officials. This tendency grossly handicaps the ability of civil rights plaintiffs, always facing uphill fights, to pursue their causes.

It is feared that absent intervention by this Court, that this legal imbalance will remain uncorrected and that an unhealthy and prejudicial sense of near absolute immunity in the law enforcement community will encourage rather than dissuade the human tendency to abuse power against the nearly helpless.

CONCLUSION

Petitioners respectfully request that this Court grant the Petition.

Respectfully submitted,



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APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
April 28, 2006

No. 05-1805
CA-03-84

TAMMY R. SABO

Plaintiff - Appellant

v.

STEVE CANTERBURY, Individually and in his capacity as Director, West Virginia Regional Jail and Correctional Facility Authority; JAMIE SPENCER, Individually and in his capacity as Warden; NORTHERN REGIONAL JAIL AND CORRECTIONAL FACILITY; WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Defendants- Appellees

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and

rehearing en banc is denied.

Entered for a panel composed of Judge Motz, Judge Shedd, and Judge Gregory.

For the Court,

/s/ Patricia S. Connor

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-1805

TAMMY R. SABO,

Plaintiff - Appellant,

v.

STEVE CANTERBURY, Individually and in his capacity as Director, West Virginia Regional Jail and Correctional Facility Authority; JAMIE SPENCER, Individually and in his capacity as Warden; NORTHERN REGIONAL JAIL AND CORRECTIONAL FACILITY; WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY,

Defendants- Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., District Judge. (CA-03-84)

Submitted: March 24, 2006 Decided: March 30, 2006

Before MOTZ, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Peter M. Suwak, Washington, Pennsylvania for Appellant. David L. Wyant, BAILEY & WYANT, P.L.L.C., Wheeling, West Virginia; Chad M. Cardinal, WV REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY, Charleston, West Virginia, for Appellees.

PER CURIAM:

Tammy R. Sabo appeals the district court's order granting summary judgment to the defendants on her claim of deliberate indifference to her medical needs under 42 U.S.C. § 1983 and on her state law claims. We have reviewed the record and find no reversible error. Accordingly, we affirm substantially on the reasoning of the district court. See Sabo v. Canterbury, No. 5:03CV84 (N.D. W. Va. June 16, 2005). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TAMMY SABO,

Plaintiff,

v. Civil Action No. 5:03CV84 (STAMP)

STEVEN CANTERBURY, individually and in his capacity as Director, WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILLITY AUTHORITY, and JAMIE SPENCER, individually and in his capacity as Warden, NORTHERN REGIONAL JAIL AND CORRECTIONAL FACILITY,

Defendants.

MEMORANDUM OPINION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Plaintiff, Tammy Sabo, filed a complaint with this court on June 20, 2003. Plaintiff's claim alleges the defendants were indifferent to plaintiff's medical needs in violation of 42 U.S.C. § 1983. The plaintiff also makes state law claims for intentional infliction of mental distress, negligence and failure to provide adequate medical care and/or confinement conditions. On August 9, 2004, this Court entered a memorandum opinion and order granting in part and denying in part defendants' motion to dismiss the above-styled civil action.

In its August 9, 2004 opinion, this Court held that the plaintiff's claims for monetary damages against the

defendants in their official capacity, and against the Northern Regional Jail and Correctional Facility ("Northern Regional Jail"), were barred by the Eleventh Amendment. See Op. at 4-5. However, this Court denied the defendant's qualified immunity argument pursuant to Federal Rule of Civil Procedure 12(b)(6), accepting as true all well-pleaded material factual allegations. This Court found that the plaintiff's complaint stated a possible Eighth Amendment claim for ineffective medical treatment upon which relief could be granted, but denied the plaintiff's Fifth and Ninth Amendment claim.[1] Finally, this Court gave the plaintiff leave to amend her complaint to allege physical manifestations of emotional distress.

Pursuant to the August 9, 2004 opinion, the plaintiff filed an amended complaint and the defendants, Steven Canterbury ("Canterbury"), Jamie Spencer and Northern Regional Jail, filed a third-party complaint against Primecare Medical of West Virginia ("Primecare").[2] Defendants then filed a motion for summary judgment, plaintiff filed a response and defendants filed a reply. Following the deposition of the plaintiff's treating psychologist, Warren P. Goodrich, D.O., ("Dr. Goodrich"), defendants filed a supplemental memorandum in support of their motion for summary judgment, and the plaintiff replied.

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[1] This court also held that the exhaustion requirement of 42 U.S.C. § 1997e(a) did not apply to the plaintiff because she filed her complaint after she was released from the Northern Regional Jail. Further, this Court found the restrictions of § 1997e(e) were inapplicable for similar reasons, and also because the plaintiff could amend her complaint to allege physical manifestations of emotional distress. See Op. at 13-16.

[2] Primecare was thereafter dismissed pursuant to Federal Rule of Civil Procedure 41(a).

II. Facts

The facts of this case have been stated in this Court's August 9, 2004 opinion addressing defendants' motion to dismiss, and need not be repeated in detail here.

To summarize, the plaintiff served sentence of six months and one day over 91 consecutive "weekends."[3] See Mot. Summ. J., Ex. A. Upon arrival at the Northern Regional Jail, the plaintiff was given a handbook outlining the grievance procedure and she was instructed on how to file a grievance. See Mot. Summ. J., Ex. D. On June 20, 2001, plaintiff finished her sentence at the Northern Regional Jail and was released. Two years later, the plaintiff filed this action alleging that, while incarcerated, defendants refused to isolate her from the general inmate population and did not give plaintiff her prescription medication at the proper time or in the proper manner.

III. Applicable Law

Under Federal Rule of Civil Procedure 56(c), summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The party seeking summary judgment bears the initial burden of

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[3] Plaintiff began serving her sentence on the weekends, but beginning around May 17, 2000, the plaintiff served her two-days per week on Wednesdays through Fridays to ensure the availability of a mental health provider while plaintiff was in the Northern Regional Jail. See Mot. Summ. J. at 3.

showing the absence of any genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). "The burden then shifts to the nonmoving party to come forward with facts sufficient to create a triable issue of fact." Temkin v. Frederick County Comm'rs, 945 F.2d 716, 718 (4th Cir. 1991), cert. denied, 502 U.S. 1095 (1992) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)).

However, as the United States Supreme Court noted in Anderson, "Rule 56(e) itself provides that a party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of his pleading, but ... must set forth specific facts showing that there is a genuine issue for trial." Id. at 256. "The inquiry performed is the threshold inquiry of determining whether there is the need for a trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Id. at 250; see also Charbonnages de France v. Smith, 597 F.2d 406, 414 (4th Cir. 1979) (Summary judgment "should be granted only in those cases where it is perfectly clear that no issue of fact is involved and inquiry into the facts is not desirable to clarify the application of the law." (citing Stevens v. Howard D. Johnson Co., 181 F.2d 390, 394 (4th Cir. 1950))).

In Celotex, the Court stated that "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Summary judgment is not appropriate until after the non-moving party has had sufficient opportunity for discovery. See Oksanen v. Page

Mem'l Hosp., 912 F.2d 73, 78 (4th Cir. 1990), cert. denied, 502 U.S. 1074 (1992). In reviewing the supported underlying facts, all inferences must be viewed in the light most favorable to the party opposing the motion. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

IV. Discussion

A. Section 1983 Claim

The defendants argue that the plaintiff has failed to establish the elements necessary to prove a violation of her Eighth Amendment rights, and therefore, her claims pursuant to § 1983 must be dismissed. Specifically, the defendants argue that the plaintiff has not shown that the alleged deprivation of medical care and improper confinement conditions were "sufficiently serious" as required to survive summary judgment. Even if the alleged violations were sufficiently serious, the defendants argue that they lacked sufficiently culpable states of mind for purposes of § 1983.

The plaintiff responds that deprivation of medical care and improper confinements conditions were "sufficiently serious" because the plaintiff suffered from depression and agoraphobia. Further plaintiff argues that defendants had sufficiently culpable states of mind because the defendants knew of the plaintiff's condition through her treating physician's recommendations. Plaintiff contends that the defendants knew that failure to follow such recommendations of plaintiff's treating physician would result in a deterioration of mental health and suicidal tendencies.

As stated by this Court's August 9, 2004 opinion, the plaintiff's § 1983 claim relies on her ability to show defendants violated her Eighth Amendment right against

cruel and unusual punishment. See Young v. City of Mount Ranier, 238 F.3d 567, 574 (4th Cir. 2001). In order to establish a violation of the Eighth Amendment, the plaintiff must prove "(1) that the deprivation of [a] basic human need was objectively sufficiently serious, and (2) that subjectively the officials act[ed] with a sufficiently culpable state of mind." De'Lonta v. Angelone, 330 F.3d 630, 634 (4th Cir. 2003) (emphasis in original) (internal quotation marks omitted) (citing Wilson v. Seiter, 501 U.S. 294, 297 (1991)).

1. Plaintiff's Deprivation Not Objectively Sufficiently Serious

In considering the first prong, the phrase "sufficiently serious" means "extreme deprivations," and a claimant must show a "serious or significant physical or emotional injury resulting from the challenged conditions." De'Lonta at 634. In De'Lonta, the Fourth Circuit considered a prisoner's need for protection against self-mutilation to be a serious medical need sufficient to satisfy the first prong of the Eighth Amendment inquiry. However, it should be noted that the De'Lonta court was reviewing a district court's dismissal of proceedings in forma pauperis pursuant to § 1915(e)(2)(B)(ii).[4]

In contrast, this Court in this case considers the first prong for purposes of summary judgment, which creates a

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[4] To dismiss for failure to state a claim in proceedings in forma pauperis, a court must accept all well-pleaded allegations in the plaintiff's as true and it must appear certain that the plaintiff cannot prove any set of facts in support of his claim entitling the plaintiff to relief. See De'Lonta at 631, n.1(dismissal standard under § 1915(e)(2)(B)(ii) same as standard for Fed. R. Civ. P. 12(b)(6)). Veney v. Wyche, 293 F.3d 726, 730 (4th Cir. 2002)(giving dismissal standard).

higher burden for the plaintiff. See Anderson, 477 U.S. at 256 (a plaintiff must do more than rest upon mere allegations in her pleadings). Accordingly, the plaintiff must do more than simply "allege" a serious or significant physical or emotional injury resulting from a sever deprivation. Plaintiff must set forth specific facts showing that there were serious or significant deprivations that resulted in physical or emotional injuries, and that such injuries were caused by the alleged deprivation. The plaintiff successfully presents facts indicating a serious mental injury.[5] However, the plaintiff does not make the requisite showing that her injuries were caused by deprivations in the Northern Regional Jail or that the deprivations themselves were severe.

Causation in § 1983 actions encompasses cause in fact and proximate cause. Shaw v. Stroud, 13 F.3d 791, 800 (4th Cir. 1994). The plaintiff has shown neither. The plaintiff offers Dr. Goodrich's letters, arguing that an alleged failure to follow the advice of these letters caused injury to Sabo. The letters only show that Sabo had sever mental issues going into the Northern Regional Jail. See Pl.'s Reply , Ex. A at 4-5. Dr. Goodrich's February 29, 2000 letter, which was drafted during Sabo's period of incarceration, informs officials of Sabo's preexisting mental condition and suggests the possible mitigating procedure of isolation. Id. at 5. Notwithstanding this recommendation, Dr. Goodrich repeatedly testified in his deposition that, according to his knowledge and his records, Sabo did not suffer any mental or physical injury as a result

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[5] This Court agrees with the plaintiff that psychological complications that reasonably create a known risk of suicide are serious medical needs. The December 3, 1999 and February 29, 2000 letters from treating psychiatrist, Warren P. Goodrich, D.O., indicating that the plaintiff had serious mental complications were sufficient to establish an injury, though insufficient to show causation. Pl.'s Reply, Ex. A at 4-5.

of her time in the Northern Regional Jail. See Defs.' Supp. Mem. Ex. AAA at 46-52.[6]

Further undermining the causation element in this case is the fact that Sabo only in the Northern Regional Jail for two days of every week during her period of incarceration. The parties agree that no suicide attempts occurred while she was actually in the custody of the Northern Regional Jail. See Pl.'s Reply to Defs.' Supp. Mot. at 11-12.[7] Indeed, the plaintiff herself was even unsure if her suicide attempts were caused by conditions in the Northern Regional Jail:

> Sabo: Oh, no, wait, you know what, I tried to kill myself and went to the crisis unit before I started serving my time in jail. And then Randy had me involuntarily committed while I was still going to jail, I do believe, it could be backwards. I'm not sure.

Pl.'s Reply, Ex. C at 22. And again:

> Q. Have you tried to kill yourself on more than one occasion?

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[6] Dr. Goodrich further testifies that jail, in general, "might have been a stressor involved with [Sabo's] suicide attempt." Id. at 46. However, even this statement does not help the plaintiff's cause. Dr. Goodrich does not specify the Northern Regional Jail; he merely refers to jail in general. In addition, Dr. Goodrich's statement is speculative, surmising only that jail "might" have lead to Sabo's suicide attempt.

[7] In fact, the Northwood Health System Triage Services Form and a Crisis Stabilization form completed pursuant to the plaintiff's September 2000 suicide attempt indicate Sabo was upset "over conflicts with her boyfriend" rather than unlawful treatment in the Northern Regional Jail. Defs.' Reply, Ex. DD.

A. Throughout my life?
Q. Yes.
A. Yes.
Q. How many occasions do you recall?
A. Probably four or five that I remember.

Id. at 24. And again:

Q. Do you remember why you tried to kill yourself in September of 2000?
A. Just upset and worrying about going to jail.

Id. at 25 (emphasis added). In sum, the plaintiff has not established the necessary causal link between her time in the Northern Regional Jail and her injury.

Furthermore, the plaintiff has not shown how the alleged deprivations were "severe" for purposes of the Eighth Amendment. The plaintiff alleges that the defendants: (1) placed the plaintiff in the general prison population instead of in isolation; (2) did not give adequate food and water with the plaintiff's medication; and (3) did not always properly give the plaintiff her medication. This Court reviews each of these allegations in turn.

First, the record indicates that placing the placing the plaintiff in isolation would probably have been more harmful than keeping her in the general population.[8] Specifically, prison officials testified that "isolation" in the jail consisted of a booking area with frequent traffic and a disciplinary cell

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[8] The plaintiff indicated that she was often kept in a cell by herself even when she was in general population. Pl.'s Resp. Ex. C at 65. Further more, the prison guards kept Sabo under observation when she was suicidal. See Defs.' Mot. Summ. J., Ex. L.

described as "the hole." Pl.'s Reply, Ex. D at 12-14. Indeed, Dr. Goodrich testified that keeping Sabo in the booking area could have made her "more anxious because she'd be a point of observation even to the point of having to use the bathroom facility." Defs.' Supp. Mem., Ex. AAA at 35. Finally, the jail officials screened Sabo each time she was incarcerated to determine whether her physical and mental conditions required isolation in the booking area. Mot. Summ. J., Ex. L. When it was determined that isolation was necessary, Sabo was isolated and monitored by jail personnel. Id. Accordingly, the choice to keep the prisoner in the general population was in the plaintiff's best interest.

Second, Sabo maintains that she was not provided with sufficient food or water. However, Sabo testified in her deposition that she always received additional water when she requested it. Pl.'s Reply Ex. C. at 78. This Court recognizes that Dr. Goodrich's December 3, 1999 letter recommends that Sabo's medication be taken with food.[9] However, the plaintiff has not presented any factual basis demonstrating that she received no food with her medication or how the lack of food with her medication constituted a "severe deprivation." Furthermore, the plaintiff never filed a grievance or entered a formal complaint indicating that she was receiving her medication improperly.[10] While the lack of a formal grievance regarding medication is not dispositive of this issue, it constitutes evidence that the plaintiff was not

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[9] It should be noted that the plaintiff testified that the prescription bottle for her medication contained no instructions indicating that food should be taken with the medication. Pl.'s Reply. Ex. C at 36.

[10] As stated above, the plaintiff was given a handbook outlining the grievance procedure and she was instructed on how to file such a grievance. See Mot. Summ. J., Ex. D.

suffering from the "severe deprivation" alleged.

Finally, Sabo argues that she was not always provided with her necessary medications. Again, Sabo filed no grievance with regard to her medication. In addition, Sabo presents no factual evidence that suggests she did not receive medications. To the contrary, medication charting records kept by the Northern Regional Jail indicate that the plaintiff was given her medication while incarcerated. Defs.' Mot. Summ. J., Ex. M. Accordingly, this Court finds that the plaintiff cannot satisfy the first prong of the Eighth Amendment analysis under § 1983, and therefore, the defendants' motion for summary judgment must be granted.

2. Plaintiff Cannot Show Deliberate Indifference

Even if the plaintiff survived the requirements under the first prong, she fails to show that the defendants acted with deliberate indifference as required under the second prong of the Eighth Amendment analysis. As noted in Miltier v. Beorn, 896 F.2d 848 (4th Cir. 1990), deliberate indifference to the serious medical needs of a prisoner must be demonstrated by either actual intent or reckless disregard. In other words, the defendants' indifference to a prisoner's medical needs must be so significant that it offends "evolving standards of decency." Estelle v. Gamble, 429 U.S. 97, 102 (1976). Furthermore, the official "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Rich v. Bruce, 129 F.3d 336, 338 (4th Cir. 1994) (citing Farmer v. Brennan, 511 U.S. 825 (1994)).

The plaintiff argues that this subjective element is satisfied because the defendants ignored a court order concerning Sabo's treatment as well as the recommendations of the plaintiff's treating psychologist, Dr. Goodrich. The

plaintiff contends that the refusal to follow outside orders demonstrates a "pattern and practice and policy" of resisting such orders unless confirmed by prison doctors. Resp. at 9. This Court disagrees.

As stated above, Dr. Goodrich's December 3, 1999 and February 29, 2000 letters recommended isolation and indicated that certain medications needed to be taken with food. Ex. A. Ohio County Magistrate Rose M. Humway entered a Medication Order directing the Northern Regional Jail to comply with the medical orders/requests of Dr. Goodrich and to provide appropriate prescription medication to Sabo. After receiving the second letter and a motion from Sabo's defense counsel for the jail to abide by the letters, Magistrate Humway drafted her own letter promising to review Dr. Warren's suggestions and "comply if possible." Ex. B. Based on the content of these letters and Magistrate Humway's order, there is no indication that they were ignored.

As stated above, "isolation" in the Northern Regional Jail would have consisted of confinement in the booking area where Sabo would have remained in plain view of an area with constant traffic. P.'s Resp., Ex. D at 12-14. Such confinement would probably have been more taxing on Sabo's psychological health, as acknowledged by Dr. Goodrich's deposition testimony. Defs.' Supp. Mem., Ex. AAA at 35. Accordingly, the Northern Regional Jail took measures to ensure compliance with the spirit of Dr. Goodrich's recommendations and thus complied with the subsequent Medication Order. The plaintiff was physically and psychologically evaluated by the jail's medical personnel each time she was incarcerated. Mot. Summ. J., Ex. H and I. If officials found Sabo to be suicidal, she was placed on "suicide watch" in a holding cell with regular monitoring. Id., Ex. L. Factual evidence indicates that she regularly

received her medication. Id., Ex. M. In sum, the Northern Regional Jail monitored Sabo's psychological health, took steps to ensure the plaintiff would not suffer any severe deprivations, and responded reasonably to the risks presented in Dr. Goodrich's evaluation. See Farmer v. Brennan, 511 U.S. 825, 844 (1994) (finding that prison officials who know of a substantial risk of harm and act reasonably may be free from liability, even if harm ultimately occurs). Therefore, the plaintiff has not established that the subjective acts of the defendants violated her Eighth Amendment right against cruel and unusual punishment, and summary judgment for the defendants is warranted.

B. Qualified Immunity

Defendants argue that Canterbury and Spencer are further protected from liability under the doctrine of qualified immunity. This Court agrees. Government officials are liable only of "they have engaged in conduct that violates clearly established constitutional rights of which a reasonable person would have known." Pritchett v. Alford, 973 F.2d 307, 312 (4th Cir. 1992) (quoting Harlow v. Fitzgerald, 457 U.S. 8000, 818 (1982) (internal quotation marks omitted)). This Court has already found that no constitutional right was violated, and thus the analysis is essentially complete. However, even if a clearly established constitutional right had been violated, the conduct of Canterbury and Spencer would still fall under the protections of qualified immunity because their conduct did not "create a pervasive and unreasonable risk of constitutional injury." See Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994).

A court's determination of the reasonableness for purposes of qualified immunity must be made "on the basis of information actually possessed by the officer at the critical

time" in question and "in light of any exigencies of time and circumstance that reasonably may have affected the officer's perceptions." Pritchett at 313. The plaintiff argues that defendant Spencer is not protected by qualified immunity because he personally reviewed Dr. Goodrich's letters and Magistrate Humway's order, recognized that failure to follow this information was clearly a constitutional violation, but nevertheless failed to comply. With regard to Canterbury, the plaintiff contends qualified immunity is ineffective because Canterbury established a policy which actively sought to ignore or modify medical orders or recommendations regarding inmates.

The plaintiff's argument is without merit. The plaintiff relies on the assumption that Dr. Goodrich's letters and Magistrate Humway's order required Sabo's placement in isolation. This interpretation is contrary to the plain language of these documents. Dr. Goodrich's first letter asks the jail officials to "consider" isolation and his second letter merely "encourage[s] isolation." Mot. Summ. J., Ex. A. Similarly, Magistrates Humway's Order directs the jail to provide Sabo with medication, but does not require jail officials to keep her in isolation. The order simply states that the jail shall comply with "the medical order/requests." The letters ultimately request action for the sake of Sabo's mental health and such action was taken.

Perhaps most importantly, Canterbury and Spencer's particular compliance with the letters of Dr. Goodrich, and with the magistrate's order, did not create a "pervasive and unreasonable risk of constitutional injury." Shaw at 799. As explained above, the physical and psychological evaluations of Sabo upon arrival, the suicide watch, the regular distribution of Sabo's medication, the lack of grievance on the part of Sabo, and the actual nature of facilities available at the Northern Regional Jail all indicate that Canterbury and

Spencer established and maintained reasonable conditions for Sabo in light of her mental and physical health, and the exigencies of time and circumstance. Accordingly, both Canterbury and Spencer are protected by qualified immunity.

C. Failure to Exhaust Remedies No Bar

The defendants argue that because the plaintiff did not file any grievance and did not attempt to exhaust her administrative remedies available to her while in prison, her claim is barred by 42 U.S.C. § 1997e(a). This Court already addressed the issue of exhaustion in its August 9, 2004, finding that the exhaustion requirement does not apply to the plaintiff because she filed her complaint after she was released from the Northern Regional Jail. Nothing in the plaintiff's motion for summary judgment convinces this Court to change its initial ruling. Accordingly, the plaintiff's action is not barred for failure to exhaust alternative remedies.

D. State Law Causes of Action Barred

In addition to her § 1983 claim, the plaintiff's complaint includes state law causes of action for intentional infliction of emotional distress, negligence and failure to provide adequate medical are and/or confinement conditions consistent with plaintiff's medical condition. As a general matter, West Virginia's Governmental Tort Claims and Insurance Reform Act, W.Va. Code §§ 29-12A-1, et seq., provides that a political subdivision is immune from liability resulting from the execution or enforcement of the lawful orders of any court. Furthermore, employees of a political subdivision are generally immune from any loss or claim unless they act: (1) outside the scope of employment, (2) with

malicious purpose, in bad faith or in a wonton or reckless manner, or (3) liability is specifically expressed by law. W. Va. Code § 29-12A-5. This Court finds that the Northern Regional Jail was executing and enforcing the lawful sentence of Sabo imposed by the Magistrate Court of Ohio County, West Virginia. Moreover, this Court finds that the officials of the Northern Regional Jail were operating within the scope of their employment and without malicious purpose, as explained above. Therefore, this Court finds that the plaintiff's state law claims against the defendants are barred as a matter of law and must be dismissed.

However, even if the plaintiff's claims are not barred pursuant to West Virginia's Tort Claim Act, the plaintiff has not established key elements to each of her state law claims. In West Virginia, intentional infliction of emotional distress requires a showing of "extreme and outrageous conduct that intentionally or recklessly causes severe emotional distress to another." See Harless v. First Nat'l Bank in Fairmont, 289 S.E.2d 692, 693 (W. Va. 1982) (distinguished on other grounds). As stated above, the plaintiff has failed to show that the defendants acted improperly, let alone recklessly or with an intention to cause sever emotional distress. The plaintiff has also failed to satisfy the elements of a negligence claim, which requires a defendant to breach a duty and proximately cause an injury to the plaintiff. Strahn v. Cleavenger, 603, S.E.2d 197, 205 (W. Va. 2004). This Court has already found that the plaintiff has not established causation between the alleged breach of duty by the defendants and Sabo's alleged injuries. Accordingly, the plaintiff's negligence claim fails. Finally, the plaintiff has not demonstrated liability based on failure to provide medical care or confinement conditions. As stated above, the record shows that the plaintiff received her medication regularly and was confined in a manner consistent with Dr. Goodrich's

recommendations and the Ohio County Magistrate Court's order.

V. Conclusion

For the reasons states above, the defendants' motion for summary judgment in the aboye-styled civil action is hereby GRANTED. Accordingly, this civil action is DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: June 16, 2005

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE

Northwood Health Systems

December 3, 1999

RE: Tammy Sabo

To Whom It May Concern:

Ms. Tammy Sabo is my patient. She suffers from a panic disorder, and agoraphobia. Her condition is exacerbated by being around other people. It would be of utmost benefit if consideration could be given to keeping her isolation during the time of her confinement. In addition, she is on several medications that should be taken with food.

Thank you.

Sincerely yours,

/s/ Warren P. Goodrich
Warren P. Goodrich, D.O.
Diplomate, American Board of
Psychiatry and Neurology

WPB/kjs

2121 Eoff Street Wheeling, WV 26003 (304) 234-3570

NORTHWOOD HEALTH SYSTEMS INC. IS A PRIVATE NON-PROFIT CORPORATION

IN THE MAGISTRATE COURT OF OHIO COUNTY,
WEST VIRGININA

STATE OF WEST VIRGINIA,

Plaintiff, Case No. 99-222

v. Honorable Rose M. Humway

TAMMY R. SABO,

Defendant.

MEDICATION ORDER

The 15th day of December, 1999, came the State by its counsel, William J. Ihlenfeld, II, Assistant Prosecuting Attorney; as well came the defendant Tammy R. Sabo, in person and by her counsel, Kevin Stryker, Assistant Public Defender, in accordance with the Court's setting the matter for hearing on the terms and conditions of the defendant's serving of the sentence herein.

Whereupon the Court heard the request of the defendant based on the medical treatment rendered by her treating physician, Warren Goodrich, D.O., of Northwood Health Systems, that the Court require the Northern Regional Jail to comply with the treating physician's orders/requests and provide the prescription medicine to Tammy Sabo during the periods of time she is serving her sentence at the Northern Regional Jail.

The Court, being of the opinion the relief requested was proper, and hearing no objection thereto, accordingly

ORDERS the Northern Regional Jail to comply with the medical orders/requests and provide the prescription medicine to Tammy Sabo from her treating physician,

Warren Goodrich, D.O. of Northwood Health Systems.

SO ORDERED.

ENTER this 21s day of December, 1999.

/s/ Rose M. Humway
Magistrate

A COPY TESTE:
/s/ Barbara J. Sinclair
CLERK

Northwood Health Systems

February 29, 2000

RE: Tammy Sabo

To Whom It May Concern:

I have been treating Tammy Sabo for many years for depression and agoraphobia. She is now serving time on weekends in the jail. I feel that she needs to be separated, and kept in her own cell away from the rest of the jail community in order to prevent serious complications. She could easily become suicidal as a result of experiencing intense, severe amounts of anxiety due to her placement in the general jail community. Please encourage isolation in order to maintain this patient's current level of mental health.

Sincerely yours,

/s/ Warren P. Goodrich
Warren P. Goodrich, D.O.
Diplomate, American Board of
Psychiatry and Neurology

WPB/kjs

2121 Eoff Street Wheeling, WV 26003 (304) 234-3570

NORTHWOOD HEALTH SYSTEMS INC. IS A PRIVATE NON-PROFIT CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA AT WHEELING

TAMMY SABO,

Plaintiff,

v. Civil Action No. 5:03CV84
(STAMP)

STEVEN CANTERBURY, individually and in his capacity as Director, WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILLITY AUTHORITY, and JAMIE SPENCER, individually and in his capacity as Warden, NORTHERN REGIONAL JAIL AND CORRECTIONAL FACILITY,

Defendants.

AMENDED COMPLAINT

AND NOW comes Plaintiff, Tammy R. Sabo, by and through her counsel, Peter M. Suwak, Esquire, who files the following Amended Complaint:

INTRODUCTION

1. Plaintiff Tammy R. Sabo is an adult individual, a citizen of the United States, with her residence at 159 Miller Street, Wheeling, West Virginia 26003.

2. Defendant Steve Canterbury is a resident of the State of West Virginia and is always has been, at all times pertinent hereto, the Director

2. Defendant Northern Regional Jail and Correctional Facility is a West Virginia correctional facility with offices located at R.D. #2, Moundsville, WV 26041.

3. Defendant Jamie Spencer was at all relevant times the Warden of the Northern Regional Jail and Correctional Facility, a West Virginia correctional facility with offices located at R.D. #2, Moundsville, WV 26041.

STATEMENT OF FACTS

4. On or about March 3, 1999, upon he r plea of guilty to Domestic Battery in Case No. 99M-222-H in the Magistrate Court of Ohio County, West Virginia, Plaintiff was sentenced by Ohio County Magistrate Rose M. Humway to one year in the Northern Regional Jail. All but 6 months and one day of that sentence was suspended in lieu of a one year probationary period. The Plaintiff was to serve the six months and one day on 91 consecutive weekends.

5. After serving two of the weekends, plaintiff requested that due to her medical condition that she be permitted to serve the balance of her sentence on home confinement without electronic monitoring. The sentence was stayed pending the decision on the request. On December 3, 1999, the request was denied by the Honorable Arthur M. Recht, Judge of the Circuit Court of Ohio County, and it was ordered that the sentence be imposed immediately with credit for two weekends already served. A copy of the Order is attached as Exhibit A.

6. The Magistrate was informed concerning the medical condition of the plaintiff on December 15, 1999, and as a result issued a Medication Order on December 21, 1999, that the Northern Regional Jail was to comply with plaintiff's

treating physician's orders/requests and provide prescription medicine to Tammy Sabo during the periods of time she was serving at the jail. A copy of the Medication Order is attached hereto as Exhibit B.

7. The medical condition diagnosed by her treating physician Warren P. Goodrich, D.O. included a diagnosis of Panic Disorder with moderate agoraphobia, Social Phobia, Alcohol Abuse and possible Schizotypal Personality Disorder. On or about February 19, 2000, her treating physician issued a letter indicating that because of her depression and agoraphobia she needed to be separated and kept in her own cell away from the rest of the jail community. See letter attached hereto as Exhibit C. Magistrate Humway called the Northern Regional Jail and informed them of the needs set out by Dr. Goodrich.

8. Notwithstanding the Medication Order and letter from the treating physician, the jail refused to isolate her from the general population which included federal prisoners and prisoners who were felons. Additionally, she was not always given her prescription medication at the proper time and sometimes was given said medication without food although the prescription required them to be taken with food to prevent stomach problems.

9. This treatment, or lack thereof, continued up until her final release from the jail which took place on or about June 20, 2001.

COUNT I - CIVIL RIGHTS VIOLATIONS

10. The averments of Paragraphs 1 through 9 are hereby incorporated as though fully set forth at length.

11. This court's jurisdiction is invoked pursuant to 28 U.S.C. §1331.

12. Defendants, their agents and employees, with knowledge of plaintiff's medical needs, and/or with deliberate indifference to such medical needs, have acted or failed to act in such a way as to deprive plaintiff of necessary and adequate medical care and/or confinement conditions appropriate to her medical condition, thereby endangering the plaintiff's health and well-being. Such acts and omissions of the defendants violate rights secured to the plaintiff under the Fifth, Eighth, Ninth and Fourteenth Amendments.

13. Defendants, knowing of the medical needs of the plaintiff and with deliberate indifference to the inadequacies and deficiencies in the medical and other staffing and procedures at the Northern Regional Jail have failed and neglected to establish and implement policies, practices and procedures designed to assure that plaintiff receive medical treatment and care and/or confinement conditions appropriate to her medical condition at the standards therefor in the West Virginia Regional Jail & Correctional Facility Authority, or have adopted policies, practices and procedures which defendants knew, or reasonably should have known, would be ineffective in delivering medical treatment and care at such standards, thereby endangering the plaintiff's health and well-being in violation of rights secured to plaintiff by the Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution.

14. Defendants, knowing of the medical needs of the plaintiff and with deliberate indifference to such needs, have failed to instruct, supervise or train their employees and agents in such a manner as to assure the delivery of adequate

medical care to plaintiff and/or confinement conditions consistent with her medical condition, thereby endangering the plaintiff's health and well-being in violation of the Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution.

15. The defendants' actions and/or omissions were negligent and/or reckless and/or intentional.

16. The defendants' actions and/or omissions were committed under color of law and/or pursuant to policies, customs, practices, rules, regulations, ordinances, statutes and/or usages of the State of West Virginia, the West Virginia Regional Jail & Correctional Facility Authority and/or the Northern Regional Jail and Correctional Facility.

17. These actions have served to deprive the Plaintiff of his civil rights, as previously outlined, under color of law, and hence violate the United States Constitution and are actionable under 42 U.S.C. §1983.

18. As a result of the aforementioned, Plaintiff has been damaged as follows:

a. Severe emotional distress and related physical trauma, including, but not limited to, headaches, upset stomach, nightmares, nervousness, shortness of breath due to panic attacks, involuntary jumping at the slightest provocation, and the constant tightening of the muscles in the neck and chest producing pain and discomfort.

b. Pain, suffering, inconvenience, loss of enjoyment of life, annoyance and other emotional distress.

c. Entitlement to punitive damages due to outlined outrageous conduct.

d. Declaration of violation of rights, as outlined.

e. Medical bills in an amount to be determined and continuing.

f. Entitlement to counsel fees and costs per 42 U.S.C. §1988.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly, severally, and individually in an amount to be determined by the jury and costs and such other relief as the Court deems proper. JURY TRIAL DEMANDED.

COUNT II - INTENTIONAL INFLICTION OF MENTAL DISTRESS

19. The averments of Paragraphs 1 through 18 are hereby incorporated as though fully set forth at length.

20. The facts previously outlined constitutes the state tort of intentional infliction of mental distress. This Court is requested to accept jurisdiction pursuant to the exercise of PENDENT JURISDICTION.

21. As a result of the conduct, Plaintiff suffered damages as previously outlined in Paragraph 18.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly, severally, and individually in an amount to be determined by the jury and costs and such other relief as the Court deems proper. JURY TRIAL DEMANDED.

COUNT III - NEGLIGENCE

22. The averments of Paragraphs 1 through 21 are hereby incorporated as though fully set forth at length.

23. The facts previously outlined constitutes the state tort of negligence, particularly in failing to follow the order of the court. This Court is requested to accept jurisdiction pursuant to the exercise of PENDENT JURISDICTION.

24. As a result of the conduct, Plaintiff suffered damages as previously outlined in Paragraph 18.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly, severally, and individually in an amount to be determined by the jury and costs and such other relief as the Court deems proper. JURY TRIAL DEMANDED.

COUNT IV - FAILURE TO PROVIDE ADEQUATE MEDICAL CARE AND/OR CONFINEMENT CONDITIONS CONSISTENT WITH PLAINTIFF'S MEDICAL CONDITION

25. The averments of Paragraphs 1 through 24 are hereby incorporated as though fully set forth at length.

26. The facts previously outlined constitutes a state tort for the failure to provide adequate medical care and/or confinement conditions consistent with plaintiff's medical condition in violation of the West Virginia Constitution, statutory and/or common law. This Court is requested to accept jurisdiction pursuant to the exercise of PENDENT JURISDICTION.

27. As a result of the conduct, Plaintiff suffered damages as previously outlined in Paragraph 18.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly, severally, and individually in an amount to be determined by the jury and costs and such other relief as the Court deems proper. JURY TRIAL DEMANDED.

Respectfully submitted,

/s/ Peter M. Suwak
Peter M. Suwak, Esquire
Counsel for Plaintiff
PA I.D. # 23779
W. Va. I.D. #9508
Pete's Surplus Building
P. O. Box 1
Washington, PA 15301
(724) 228-4885

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Complaint was served by U. S. First Class Mail, postage prepaid, upon the following:

David L. Wyant, Esquire
Bailey & Wyant, P.L.L.C.
1219 Chapline Street
Wheeling, WV 26003

Chad M. Cardinal, Esquire
Regional Jail and Correctional Facility Authority
1325 Virginia Street, East
Charleston WV 25401-3011

Dated: August 24, 2004 By: /s/ Peter M. Suwak

Peter M. Suwak, Esquire
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